

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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IN THE MATTER OF THE COMPLAINT

Case No. 1:17-cv-168 (MAD/CFH)

of

TAPPAN ZEE CONSTRUCTORS, LLC,
as owner of 2007 Lobell Boat, Serial Number
L0A11504J607, FOR EXONERATION FROM
OR LIMITATION OF LIABILITY,

**AFFIDAVIT OF ATTORNEY
IN SUPPORT OF MOTION
TO VACATE INJUNCTION**

Petitioner.

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STATE OF NEW YORK)
) SS:
COUNTY OF DUTCHESS)

STEVEN M. MELLEY, sole member of STEVEN M. MELLEY, PLLC, attorney for plaintiff,
TIMOTHY MARION, being duly sworn, deposes and says:

1. I am counsel for the Claimant, Timothy Marion, herein.
2. I make and submit this affidavit in support of Claimant's motion pursuant to Federal Rule Supplemental Rule F of the Federal Rules of Civil Procedure, to vacate this Court's injunction against the Claimant herein, and to lift this Court's stay of a pending state court action by Claimant herein, as Plaintiff, against Petitioner herein, et al, in an action entitled Timothy Marion, Plaintiff against, Tappan Zee Constructors, LLC, etc. et al, defendants, under Index No. 2180/2016, which this Court has enjoined and stayed by its prior Order, dated, March 17, 2017, a true copy of which is annexed hereto as **EXHIBIT A**.
3. This action for exoneration and limitation was filed by Petitioner herein, Tappan Zee Constructors, LLC. on or about February 14, 2017, in this Court by the filing of a Complaint

for Exoneration from or Limitation of Liability (annexed here as **EXHIBIT B**), dated February 14, 2017.

4. Claimant's Verified Answer and Defenses (**EXHIBIT C**, annexed hereto) was timely filed with this Court on April 25, 2017.

5. On April 25, 2017, Claimant caused to be filed with this Court certain stipulations, *i.e.*, Claimant's Stipulations (**EXHIBIT D**, annexed hereto) by which the Claimant, Timothy Marion, has stipulated and agreed, as follows:

1) Claimant herein, Timothy Marion, does stipulate and agree to waive any *res judicata* and issue preclusion defenses arising from the pending state court action styled, Timothy Marion versus Tappan Zee Constructors, LLC, *et al.*, in the Supreme Court of the State of New York, County of Ulster, under Index No. 2180/2016, with respect to all matters regarding limitation of liability which are reserved exclusively for determination by this United States District Court for the Northern District of New York, the admiralty court herein; and

2) Claimant herein, Timothy Marion, does stipulate and agree that no collection on any judgment entered in the aforesaid pending state court action will commence until all limitation proceedings herein are concluded, and

3) Claimant herein, Timothy Marion, does stipulate and agree that this Court in Admiralty does have exclusive jurisdiction to determine all issues relative to the Petitioner's limitation of liability, including a determination of the value of the subject vessel or vessels and/or the adequacy of any security or guarantee furnished to this court by Petitioner herein; and

4) Except as stipulated herein above in items, "1" through "3", Claimant reserves unto himself all other rights and remedies, both state and federal.

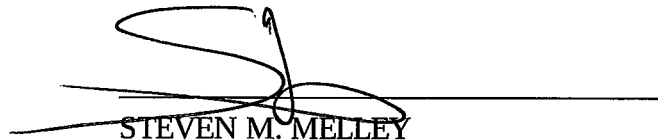
6. Upon information and belief, the Claimant herein, Timothy Marion is a "single claimant." No other claimants are known nor have any claimants appeared in this action and no other claimants are identified in the complaint for exoneration and limitation filed by Petitioner herein.

7. The security fund of \$62,500 which Petitioner has filed with this Court is not nearly adequate to fully satisfy Claimant's monetary damage claims made for his serious and diverse permanent

and disabling bodily injuries and economic losses incurred and to be incurred as a consequence of the incident aboard Petitioner's vessel, on September 17, 2013 as alleged in the verified complaint in the aforementioned stayed, state court action. A copy of the said verified complaint is annexed to the Complaint for Exoneration and/or Limitation filed herein.

8. Said Stipulations above, now require that this court must vacate the injunction and lift the stay of the said state court action to permit the single claimant herein, Timothy Marion, to pursue his state court remedies at law, subject to the Claimant's Stipulations filed herein which adequately protect the vessel owner's rights to limitation and preserve this Court's exclusive jurisdiction to determine and decide all limitation issues. (see, Memorandum of Law, submitted herewith).

WHEREFORE, The Claimant hereby requests that this Court accept as satisfactory the Claimant's Stipulations hereto filed with this Court, and that this Court vacate its injunction against the Claimant herein, and lift the stay of the pending state court action allowing the Claimant to proceed in the state court action, and grant such other relief as to this Court is just and proper.


STEVEN M. MELLEY

Sworn to before me

this 28th day of April, 2017.


NOTARY PUBLIC

STEPHANIE A. CONNOLLY
NOTARY PUBLIC, State of New York
No. 4822332
Qualified In Dutchess County
My Commission Expires May 31, 2018